

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES T SADLER
Claimant

HY-VEE INC
Employer

APPEAL 22A-UI-03559-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/26/21
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871—24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the January 20, 2022, (reference 02) unemployment insurance decision that allowed benefits based upon the determination that claimant was discharged, but not for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 25, 2022. The claimant, James T. Sadler, participated personally. The employer, Hy-Vee, Inc., participated through its hearing representative, Dean Kedlin, who did not testify, with testifying witnesses Stacey Mitchell and Abbey Bogner. Employer's Exhibits 1 through 3 were admitted. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a clerk from November 3, 2021, until this employment ended on December 9, 2021, when he was discharged.

In November or early December 2021, claimant experienced difficulty with his scheduled shifts. Specifically, he was notified that he missed a shift for which he was scheduled. The schedule claimant had access to did not indicate that he was scheduled for that shift. He spoke with management about the issue. They reassured him that they would call him if the issue arose again. He provided them with an updated phone number for that purpose.

Claimant last worked December 9, 2021. Claimant was scheduled to work December 10, 12, and 16, 2021, but did not call in or report for work. The HR representative placed calls to claimant each day but received no response. Claimant did not know that he was scheduled for these shifts and did not receive calls from the employer on any of the three days. The next shift his schedule showed was on December 20, 2021. However, one of his friends alerted him that he was removed from the schedule sometime on or after December 16, 2021. The employer had concluded claimant abandoned his job after the third missed shift on December 16, 2021, and separated him from employment effective December 9, 2021. Claimant continued to check the schedule after December 9, 2021, because he had the previous scheduling issue. The schedule available to claimant did not reflect that he was scheduled until December 20, 2021.

Claimant had no previous disciplinary warnings regarding attendance or no call/no shows. The employer maintains an attendance policy, but the policy does not include a policy specifically applicable to no call/no shows.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871—24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to

manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871—24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871—24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The employer alleges that claimant quit by job abandonment, after he did not report for or call in to work for three consecutive shifts. However, the employer has not successfully rebutted claimant's assertions that he did not know he was scheduled for the days the employer considered him a no call/no show. Claimant's assertion that he did not know he was scheduled is particularly compelling because he had a similar scheduling issue some weeks prior. Additionally, though the employer stated that it called him on each of the three days, it could not provide details regarding what number it used. Finally, though the employer has an attendance policy, it does not have a specific policy stating that three no call/no shows constitute job abandonment. For those reasons, the above-noted administrative rule does not apply to the situation at hand.

Furthermore, the administrative law judge was persuaded that claimant did not know he had missed shifts and did not know himself to be separated from employment until a friend informed

him he had been removed from the schedule. He continued to check the schedule available to him on the days he was not scheduled because of the scheduling issue sometime prior. He would not have done so if he intended to sever the employment relationship. The separation was a discharge.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dept of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dept of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as claimant was not warned in the past about attendance or no call/no shows and did not know he was missing shifts for which he was scheduled prior to the separation, the employer has not met the burden of proof to establish that claimant engaged in misconduct. The employer has not established that claimant acted with intent or negligence with respect to the employer’s interests or its policies and procedures. Benefits are allowed.

Because the separation is not disqualifying, the issues of overpayment, repayment, and participation are moot.

DECISION:

The January 20, 2022, (reference 02) unemployment insurance decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and participation are moot.



Alexis D. Rowe
Administrative Law Judge

April 1, 2022
Decision Dated and Mailed

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